

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WILLIAM J. HORAN,	:	
	:	
Plaintiff,	:	No. 4:CV-08-00529
	:	
v.	:	(McClure, J.)
	:	(Mannion, M.J.)
UNITED STATES OF AMERICA,	:	
ET AL.,	:	
	:	
Defendants	:	
	:	

ORDER

March 12, 2009

BACKGROUND:

On March 24, 2008, plaintiff William J. Horan, a federal prisoner and former inmate at the United States Penitentiary at Allenwood filing pro se, commenced this combined Federal Torts Claims Act (“FTCA”), 28 U.S.C. § 2671, et seq., and Bivens¹ civil rights action, claiming, inter alia, that the defendants were negligent and deliberately indifferent regarding an assault he endured on August 20, 2006 and the subsequent medical treatment for his injuries. (Rec. Doc. No. 1). Plaintiff named the following eleven (11) defendants: United States of America, Dr.

¹Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).

Vermeire, Ms. DeWald, Williamsport Hospital, Dr. William W. Banks, Dr. John C. Malloy, John Doe 1, John Doe 2, John Doe 3, John Doe 4 and John Doe 5. (Id.).

The matter was initially referred to United States Magistrate Judge Mannion.

On July 1, 2008, a motion to dismiss the plaintiff's complaint was filed on behalf of defendants Williamsport Hospital and Banks ("Williamsport Defendants"). (Rec. Doc. No. 32). Magistrate Judge Mannion later construed this motion as one for summary Judgment. (Rec. Doc. No. 98, p. 1). On July 8, 2008, Malloy filed a motion to dismiss. (Rec. Doc. 35). On August 13, 2008, the United States of America, Vermerie and Dewald (the "Government Defendants") filed a motion to dismiss and for summary judgment. (Rec. Doc. No. 63). The proper supporting, opposition and reply briefs for each motion were timely filed.

On February 12, 2009, Magistrate Judge Mannion filed a forty-six (46) page report and recommendation. (Rec. Doc. No. 98). In his report, the magistrate judge concluded that: (1) summary judgment should be granted in favor of the Williamsport Defendants in regards to the medical malpractice claim the court construed against them because the plaintiff has failed to file an appropriate certificate of merit, as required by Pa. R. Civ. P. 1042.3; (2) summary judgment should be granted in favor of the Williamsport Defendants in regards to plaintiff's Eighth Amendment deliberate indifference claim because the record does not

demonstrate that the Williamsport Defendants were deliberately indifferent, merely that the plaintiff disagrees with their treatment methods; (3) summary judgment should be granted in favor of the Williamsport Defendants in regards to the intentional infliction of emotional distress claim the court construed against them because it cannot reasonably be said that the actions of the Williamsport Defendants were “extreme or outrageous,” as required by state law; (4) summary judgment should be granted in favor of the Williamsport Defendants in regards to the negligent infliction of emotional distress claim the court construed against them because plaintiff has failed to demonstrate that he suffered a physical injury as a result of emotional distress, as required by state law; (5) plaintiff’s medical malpractice claim against Malloy should be dismissed for failure to file an appropriate certificate of merit, as required by Pa. R. Civ. P. 1042.3; (6) Malloy’s motion to dismiss should be granted in regards to the deliberate indifference claim the court construed against him because the record is bereft of evidence indicating deliberate indifference on Malloy’s behalf; instead it indicates that Malloy actively treated plaintiff; (7) Malloy’s motion to dismiss should be granted in regards to the intentional infliction of emotional distress claim the court construed against him because there is no indication Malloy engaged in the type of outrageous conduct necessary to sustain a claim under state law; (8) Malloy’s motion to dismiss should

be granted in regards to the negligent infliction of emotional distress claim construed against him because plaintiff has failed to demonstrate that he suffered a physical injury as a result of emotional distress, as required by state law; (9) summary judgment should be granted in favor of Vermeire in regards to the Eighth Amendment deliberate indifference claim because the record is bereft of evidence indicating deliberate indifference on Vermeire's behalf; instead it indicates that Vermeire actively treated plaintiff; (10) summary judgment should be granted in favor of DeWald in regards to the Eighth Amendment deliberate indifference claim because, inter alia, the record is bereft of evidence indicating that DeWald "has a reason to believe that the medical staff was either mistreating or not treating the plaintiff for his injuries."; (11) summary judgment should be granted in favor of the five John Doe defendants because plaintiff has made no attempt to identify the defendants; (12) to the extent that plaintiff has brought a Bivens claim against the Government Defendants in their official capacities, his complaint should be dismissed, because the government has not waived sovereign immunity regarding these claims; (13) summary judgment should be granted in favor of the Government Defendants regarding plaintiff's FTCA medical malpractice claim because plaintiff failed to file an appropriate certificate of merit, as required by Pa. R. Civ. P. 1042.3; (14) to the extent that plaintiff alleges an FTCA failure to

protect claim, summary judgment should be granted in favor of the Government Defendants because the record is bereft of evidence indicating that government officials were aware the plaintiff was in danger when he was attacked; (15) summary judgment should be granted in favor of the Government Defendants in regards to the intentional infliction of emotional distress claim the court construed against them because it cannot reasonably be said that the actions of the Government Defendants were “extreme or outrageous,” as required by state law; and, (16) summary judgment should be granted in favor of the Government Defendants in regards to the negligent infliction of emotional distress claim the court construed against them because plaintiff has failed to demonstrate that he suffered a physical injury as a result of emotional distress, as required by state law.

Plaintiff has not filed any objections to the magistrate judge’s report and recommendation and the time for doing so has since passed. Because plaintiff has elected not to object to the report and recommendation and because we agree with the magistrate judge’s thorough analysis and recommendation, we will adopt the report and recommendation in full. For the purposes of judicial economy, we will not rehash the sound reasoning employed by the magistrate judge.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. United States Magistrate J. Mannion's Report and Recommendation is ADOPTED IN FULL. (Rec. Doc. No. 98).
2. The motion for summary judgment filed on behalf of Williamsport Hospital and Dr. William W. Banks is GRANTED. (Rec. Doc. No. 32).
3. Dr. John C. Malloy's motion to dismiss is GRANTED. (Rec. Doc. No. 35).
4. The motion to dismiss and motion for summary judgment filed on behalf of the United States of America, Dr. Vermeire, Ms. DeWald, John Doe 1, John Doe 2, John Doe 3, John Doe 4 and John Doe 5 is GRANTED. (Rec. Doc. No. 53).
5. Final judgment is entered against plaintiff and in favor of defendants Williamsport Hospital, Dr. William W. Banks, the United States of America, Dr. Vermeire and Ms. DeWald.
6. The complaint is dismissed as against Dr. John C. Malloy and John Does 1, 2, 3, 4 and 5.
7. The clerk is directed to close the case file.
8. Any appeal from this order is not taken in good faith.

s/ James F. McClure, Jr.

James F. McClure, Jr.
United States District Judge